

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

AMERICAN AIRLINES, INC.,

Plaintiff,

v.

SKIPLAGGED, INC.,

Defendant.

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Civil Action No. 4:23-cv-00860-P

PLAINTIFF AMERICAN AIRLINES, INC.'S WITNESS LIST

Pursuant to the Court's Scheduling Order [Dkt. No. 20 at 5–6] and Rule 26.2(b) of the Local Civil Rules for the Northern District of Texas, Plaintiff American Airlines, Inc. ("American") submits its Witness List¹ to the Court and Defendant Skiplagged, Inc. ("Skiplagged"):

A. Probable Witnesses

1. Marcial Lapp

a. Name and Address

Marcial Lapp
c/o Dee J. Kelly, Jr.
KELLY HART & HALLMAN LLP
201 Main Street, Suite 2500
Fort Worth, Texas 76102

b. Brief Narrative Summary of Anticipated Testimony

Mr. Lapp is a Vice President of Revenue Engineering at American. Mr. Lapp is serving as American's corporate representative in this case and has knowledge about all matters that remain at issue in the litigation, including but not limited to, American's ownership and control of its valuable trademarks; Skiplagged's infringement of those valuable trademarks; American's timing on the enforcement of its trademark rights with Skiplagged; and American's trademark and

¹ American and Skiplagged met and conferred on September 5, 2024, and American believes that all witnesses will appear at trial in person, except for the Corporate Representative of Kiwi.com (Varvara Reva), whose deposition testimony designations have been designated by Skiplagged. [See Dkt. No. 263 at 2–3].

copyright damages related to Skiplagged's infringement. He may also testify as to other harms Skiplagged's business practices cause to American and its customers (some included in written customer complaints), as well as the numerous affirmative defenses pled by Skiplagged.

c. Whether Witness Was Deposed

Mr. Lapp was deposed on May 30, 2024 and again on July 1, 2024 as American's corporate representative.

d. Expected Duration of Testimony

Mr. Lapp's direct testimony should take less than an hour.

Brief Statement of Subject Matter to Be Covered	Sworn	Testified
American's ownership and control of its valuable trademarks; Skiplagged's infringement of those valuable trademarks; American's business decisions impacting the timing of American's enforcement of its trademark rights with Skiplagged; and American's trademark and copyright damages related to Skiplagged's infringement. Mr. Lapp may also testify as to other harms Skiplagged's business practices cause to American and its customers (some reported in written customer complaints), as well as the numerous affirmative defenses pled by Skiplagged.		

2. Robert Lewis Holmes, Jr.

a. Name and Address

Robert Lewis Holmes, Jr.
3308 Preston Road # 350-187
Plano, Texas 75093

b. Brief Narrative Summary of Anticipated Testimony

Mr. Holmes is a private investigator who was retained by American in this case. He is expected to testify regarding the navigation of Skiplagged's website, skiplagged.com; the use of American's trademarks and copyright on that site; and the multiple purchases he made on skiplagged.com at the direction of outside counsel.

c. Whether Witness Was Deposed

Mr. Holmes was deposed on June 11, 2024.

d. Expected Duration of Testimony

Mr. Holmes' testimony should take less than an hour.

Brief Statement of Subject Matter to Be Covered	Sworn	Testified
Navigation of skiplagged.com and purchases made on that website. Testimony about Skiplagged's use of American's trademarks and copyright on Skiplagged.com.		

3. Raymond Scott Chandler

a. Name and Address

Scott Chandler
c/o Dee J. Kelly, Jr.
KELLY HART & HALLMAN LLP
201 Main Street, Suite 2500
Fort Worth, Texas 76102

b. Brief Narrative Summary of Anticipated Testimony

Mr. Chandler is the Senior Vice President of Revenue Management and Loyalty. Through his role as a Senior Vice President, he has gained insight into and may testify as to the impacts of Skiplagged's business practices, including hidden city ticketing, on American and its customers. Mr. Chandler may also offer testimony regarding American's ownership and control of its valuable trademarks and the timing of American's enforcement of its trademark rights with Skiplagged, as well as American's investigation into and limited interactions with Skiplagged.

c. Whether Witness Was Deposed

Mr. Chandler was deposed on June 7, 2024.

d. Expected Duration of Testimony

Mr. Chandler's testimony should take 1.25 to 1.5 hours.

Brief Statement of Subject Matter to Be Covered	Sworn	Testified
The impacts of Skiplagged's business practices, including hidden city ticketing, on American and its customers. Mr. Chandler may also offer testimony regarding American's ownership and control of its valuable trademarks and the timing of American's enforcement of its trademark rights with Skiplagged, as well as American's investigation into and limited interactions with Skiplagged.		

4. Aktarer Zaman**a. Name and Address**

Aktarer Zaman
 c/o William L. Kirkman
 KIRKMAN LAW FIRM, PLLC
 201 Main Street, Suite 1160
 Fort Worth, Texas 76102

b. Brief Narrative Summary of Anticipated Testimony

Mr. Zaman is the Chief Executive Officer of Skiplagged. He is expected to testify regarding the creation, management, and operation of Skiplagged's website, skiplagged.com; Skiplagged's business practices, including its policies and procedures with regard to use and infringement of the trademarks and copyrights of American and other airlines; Skiplagged's receipt, acknowledgement, evaluation, and response to customer complaints; Skiplagged's knowledge of customer confusion regarding its use of American's trademarks; and Skiplagged's knowledge about, and business relationships with, airlines, travel agencies, metasearch engines, or other third parties that have a role in the booking and sale of American's flights. Mr. Zaman will also testify as to American's damages for copyright and trademark infringement, including his knowledge of Skiplagged's financial records, the revenues Skiplagged generates from the sale of American tickets, all deductions and expenses Skiplagged alleges relate to those revenues, and the maintenance/destruction of records related to Skiplagged's financials. Finally, to the extent not covered above, Mr. Zaman will testify about all affirmative defenses Skiplagged alleges in this case, including its claim that Skiplagged relied on American's representations to the company's detriment and that its use of American's trademarks was a fair use.

c. Whether Witness Was Deposed

Mr. Zaman was deposed in his individual capacity on May 29, 2024 and as the Rule 30(b)(6) corporate representative of Skiplagged on June 12, 2024.

d. Expected Duration of Testimony

Mr. Zaman's testimony should take 3 hours.

Brief Statement of Subject Matter to Be Covered	Sworn	Testified
The creation, management, and operation of skiplagged.com; Skiplagged's business practices, including its policies and procedures with regard to use of the trademarks and copyrights of American and other airlines; Skiplagged's receipt, acknowledgement, evaluation, and response to customer complaints; Skiplagged's knowledge of customer confusion regarding		

<p>its use and infringement of American's trademarks; and Skiplagged's knowledge about, and business relationships with, airlines, travel agencies, metasearch engines, or other third parties that have a role in the booking and sale of American's flights. Mr. Zaman will also testify as to American's damages for copyright and trademark infringement, including his knowledge of Skiplagged's financial records, the revenues Skiplagged generates from the sale of American tickets, all deductions and expenses Skiplagged alleges relate to those revenues, and the maintenance/destruction of records related to Skiplagged's financials. Mr. Zaman may also testify about all affirmative defenses Skiplagged alleges in this case, including its claim that Skiplagged relied on American's representations to the company's detriment, and that its use of American's trademarks was a fair use.</p>		
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5. Daniel Gellert

a. Name and Address

Daniel Gellert
c/o William L. Kirkman
KIRKMAN LAW FIRM, PLLC
201 Main Street, Suite 1160
Fort Worth, Texas 76102

b. Brief Narrative Summary of Anticipated Testimony

Mr. Gellert is the Chief Operating Officer of Skiplagged. He is expected to testify regarding the operation of Skiplagged's business, including the functioning of its website, skiplagged.com. Mr. Gellert will also testify about Skiplagged's financial performance, including knowledge of Skiplagged's generation of revenues from the sale of American's tickets and Skiplagged's payment of expenses related to those revenues. Mr. Gellert may also testify about the maintenance/destruction of Skiplagged's business records. Mr. Gellert will also testify about Mr. Zaman's control over most functions of Skiplagged's operation, including its use and infringement of American's trademarks and copyright.

c. Whether Witness Was Deposed

Mr. Gellert was deposed on November 30, 2023.

d. Expected Duration of Testimony

Mr. Gellert's testimony should take 1 hour.

Brief Statement of Subject Matter to Be Covered	Sworn	Testified
The operation of Skiplagged's business, including the functioning of its website, skiplagged.com; Skiplagged's financial performance, including knowledge of its generation of revenues and its payment of expenses related to those revenues; the maintenance/destruction of Skiplagged's business records; and Mr. Zaman's control over most functions of Skiplagged's operation, including its use and infringement of American's trademarks and copyright.		

B. Possible Witnesses

1. Neil Geurin

a. Name and Address

Neil Geurin
c/o Dee J. Kelly, Jr.
KELLY HART & HALLMAN LLP
201 Main Street, Suite 2500
Fort Worth, Texas 76102

b. Brief Narrative Summary of Anticipated Testimony

Mr. Geurin is a Managing Director of Airline Retailing at American. Through his capacity as Managing Director, Mr. Geurin has insight into and may testify regarding American's investigation into and limited interactions with Skiplagged, as well as the timing of American's enforcement of its trademark rights with Skiplagged. Mr. Geurin may also testify regarding the impacts of Skiplagged's business practices, including hidden city ticketing, on American and its customers.

c. Whether Witness Was Deposed

Mr. Geurin was deposed on June 28, 2024.

d. Expected Duration of Testimony

Mr. Geurin's testimony should take less than an hour.

Brief Statement of Subject Matter to Be Covered	Sworn	Testified
American's interactions with Skiplagged and the timing of American's enforcement of its trademark rights with Skiplagged, as well as the impacts of Skiplagged's business practices, including hidden city ticketing, on American and its customers.		

2. Representative of Kiwi, sro and Kiwi, Inc.

a. Name and Address

Kiwi.com, s.r.o.
Rohanské nábřeží 678/25
Karlín, 186 00
Praha 8, Czechia

Kiwi.com, Inc.
1221 Brickell Avenue, Suite 1115
Miami, Florida 33131

b. Brief Narrative Summary of Anticipated Testimony

A corporate representative of Kiwi, Varvara Reva, may testify about Kiwi's business relationship with Skiplagged; her knowledge of Skiplagged's business practices ; and the many customer complaints lodged against Kiwi and Skiplagged related to Skiplagged's sale of American tickets.

c. Whether Witness Was Deposed

Varvara Reva, as the Rule 30(b)(6) corporate representative of Kiwi, was deposed on March 26, 2024.

d. Expected Duration of Testimony

The corporate representative of Kiwi's testimony should take less than 1 hour.

Brief Statement of Subject Matter to Be Covered	Sworn	Testified
Kiwi's business relationship with Skiplagged; her knowledge of Skiplagged's business practices; and the many customer complaints lodged against Kiwi and Skiplagged related to Skiplagged's sale of American's tickets.		

C. Expert Witnesses

1. Yoram (Jerry) Wind, Ph.D.

a. Name and Address

Dr. Yoram (Jerry) Wind
Wind Associates
1041 Waverly Road
Gladwyne, PA 19035

b. Brief Narrative Summary of Anticipated Testimony

Dr. Wind is the President of Wind Associates. Dr. Wind is expected to testify about all matters contained in his Expert Report, including the confusion and deception Skiplagged's has caused and/or is likely to cause among consumers in the marketplace by its infringement of American's trademarks.

c. Whether Witness Was Deposed

Dr. Wind was deposed on July 8, 2024.

d. Expected Duration of Testimony

Dr. Wind's testimony should take 1–2 hours.

Brief Statement of Subject Matter to Be Covered	Sworn	Testified
All matters contained in his expert report, including the confusion and deception Skiplagged's has caused and/or is likely to cause among consumers in the marketplace by its infringement of American's trademarks.		

2. David N. Fuller, CFA, ASA, CFE

a. Name and Address

David N. Fuller, CFA, ASA, CFE
VALUE Incorporated
250 Decker Drive, Suite 200
Irving, Texas 75062

b. Brief Narrative Summary of Anticipated Testimony

Mr. Fuller is the President and Founder of VALUE Incorporated. Mr. Fuller is expected to testify regarding all matters contained in his Expert Report and Supplemental Expert Report, which cover all forms of damage American seeks in this case.

c. Whether Witness Was Deposed

Mr. Fuller was deposed on June 27, 2024 and August 13, 2024.

d. Expected Duration of Testimony

Mr. Fuller's testimony should take 1-2 hours.

Brief Statement of Subject Matter to Be Covered	Sworn	Testified
All matters contained in his Expert Report and Supplemental Expert Report, primarily all forms of damages American seeks in this case.		

3. Dee J. Kelly, Jr.**a. Name and Address**

Dee J. Kelly, Jr.
 KELLY HART & HALLMAN LLP
 201 Main Street, Suite 2500
 Fort Worth, Texas 76102

b. Brief Narrative Summary of Anticipated Testimony

Mr. Kelly is designated as American's expert on attorney's fees. If the Court takes up attorneys' fees during the trial,² Mr. Kelly will offer testimony regarding the reasonable and necessary attorneys' fees incurred by American in this case, both through the trial of this case and in the event of any appeal of the outcome in this case.

c. Whether Witness Was Deposed

Mr. Kelly was not deposed in this case.

² The parties request the Court to handle attorneys' fees post-trial. If the Court prefers to hear testimony during trial, American is including Mr. Kelly on its trial witness list.

d. Expected Duration of Testimony

Mr. Kelly's testimony should take 1 hour.

Brief Statement of Subject Matter to Be Covered	Sworn	Testified
American's reasonable and necessary attorneys' fees and costs incurred in connection with the prosecution of its copyright infringement and trademark infringement claims.		

D. Record Custodians

None.

Dated: September 12, 2024

Respectfully submitted,

/s/ Dee J. Kelly, Jr.

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I certify that on September 12, 2024, I served the foregoing document electronically in accordance with the Federal Rules of Civil Procedure.

/s/ Dee J. Kelly, Jr.
Dee J. Kelly, Jr.